



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18th STREET - SUITE 300
DENVER, COLORADO 80202-2466
<http://www.epa.gov/region08>

July 27, 2004

Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ken Barela, Mayor
City of Fountain
116 South Main Street
Fountain, Colorado 80817

Re: Administrative Order
Docket No. **SDWA-08-2004-0037**
City of Fountain
PWS ID # CO0121275

Dear Mayor Barela:

Enclosed you will find an Administrative Order (Order), which the Environmental Protection Agency (EPA) has issued under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. section 300f et seq. and its implementing regulations. Among other things, the Order finds that the City of Fountain Water System is a public water system as defined by the Safe Drinking Water Act (SDWA) and 40 C.F.R. § 141.2, and is, therefore, subject to its requirements. EPA also finds that the City of Fountain Water System has violated 40 C.F.R. part 141, subpart E; Unregulated Contaminant Monitoring Regulation (UCMR) by failing to: monitor for 12 chemical contaminants as required to determine the background levels needed to assist in new rule making; electronically report the results to EPA; and notify the public of the violations. The enclosed Order requires compliance with these requirements of the SDWA and its implementing regulations.

If the City of Fountain Water System complies with the enclosed Order EPA may choose to close the Order. Violating the enclosed Order may lead to (1) a penalty of up to \$32,500 per day of violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering the City of Fountain Water System to comply.

Please note that the effective date of the enclosed Order is the date of issuance. Within the next 10 days, please provide



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EPA with any new information that you believe the Agency is not aware of relating to the alleged violations in the Order. The information can be sent to Jackson Naftel at the address on the letterhead, including the mailcode 8ENF-W, or you may call Mr. Naftel at (800)227-8917, extension 6362, or (303) 312-6362. If you wish to have an informal conference with EPA, you may also call or write Mr. Naftel. If you are represented by an attorney please feel free to have your attorney call Michelle Jalazo, Enforcement Attorney, at (303) 312-6921.

We urge your prompt attention to this matter.

Sincerely,

SIGNED

Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosure
Order

cc: Ron Woolsey, City of Fountain Water Superintendent
Nick Zaiger, City of Fountain Water Supervisor
Larry Patterson, City of Fountain Utility Director
David Rogers, CDPHE
Lori Gerzina, CDPHE



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

July 27, 2004

Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

El Paso County Commissioner
c/o Wayne Williams
27 East Vermijo Avenue
Colorado Springs, CO 80903-2208

Re: Notice of Safe Drinking Water Act
Enforcement Action against City of
Fountain Drinking Water System
PWS ID #CO0121275

Dear Mr. Williams:

Pursuant to section 1414(a)(2)(B) of the 1996 amendments to the Safe Drinking Water Act (SDWA), the Environmental Protection Agency (EPA) is required to notify an appropriate locally elected official of any action taken in a State that does not have primary enforcement authority for public water systems, or when a State does not have primary enforcement authority for a given rule. Although the State of Colorado has primary enforcement responsibility under section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a), to ensure that public water systems comply with the SDWA, EPA retained primary enforcement authority to enforce the Unregulated Contaminant Monitoring Regulation (40 C.F.R. part 141, subpart E).

An Administrative Order is being issued under section 1414 of the SDWA to the City of Fountain, located in El Paso County, CO. This Order requires that the public water system take measures to return to compliance with the SDWA and the National Primary Drinking Water Regulations (NPDWRs). The System is in violation of 40 C.F.R. part 141, subpart E; Unregulated Contaminant Monitoring Regulation (UCMR) by failing to: monitor for 12 chemical contaminants as required to determine the background levels needed to assist in new rule making; electronically report the results to EPA; and notify the public of the violations. The enclosed Order requires compliance with these requirements of the SDWA and its implementing regulations.



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A copy of the Order is enclosed for your information. The Order does not require any response or action by the County Commission. If you have any questions regarding this Order, please contact Jackson Naftel at (303) 312-6362.

Sincerely,

SIGNED

Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosure



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)	
City of Fountain)	
Fountain, Colorado)	
)	
Respondent)	
)	ADMINISTRATIVE ORDER
Proceedings under Section 1414(g))	
of the Safe Drinking Water Act,)	
42 U.S.C. § 300g-3(g))	Docket No. SDWA-08-2004-0037
)	

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by section 1414(g) of the Safe Drinking Water Act (the Act or SDWA), 42 U.S.C. § 300g-3(g), and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS

1. The City of Fountain (Respondent) is a municipality and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a "public water system," the City of Fountain Water System, located in



Fountain, Colorado for the provision to the public of piped water for human consumption.

3. Respondent provides water to the public for human consumption through pipes to more than 10,000 persons. Respondent is a "supplier of water" as that term is defined in section 1401(5) of the SDWA and 40 C.F.R. § 141.2, and a "community water system" as defined in section 1401(5) of the SDWA and 40 C.F.R. § 141.2.
4. Respondent's public water system utilizes a ground water source.
5. On September 17, 1999, EPA promulgated a final rule, effective in January 2001, requiring selected public water systems to monitor for unregulated contaminants in drinking water in accordance with the Unregulated Contaminant Monitoring Regulation (UCMR) codified at 40 C.F.R. part 141. The purpose of the UCMR program is to collect contaminant occurrence data to support EPA's decisions regarding whether or not to regulate contaminants, such as those on the Drinking Water Contaminant Candidate List, to protect public health.
6. As a "public water system," "supplier of water," "owner," "operator," and "person," Respondent is therefore subject to the requirements of the UCMR at 40 C.F.R. part 141, subpart E, as well as part B of the



SDWA, 42 U.S.C. § 300g *et seq.*, and all other applicable requirements of the Act as defined at 42 U.S.C. § 300g-3(i), including applicable requirements within part B's implementing regulations at 40 C.F.R. part 141.

7. The State of Colorado, acting through the Colorado Department of Public Health and Environment, has primary enforcement responsibility under section 1413(a) of the SDWA, 42 U.S.C. § 300g-2(a), to ensure that suppliers of water in the State comply with the requirements of the SDWA. However, the UCMR is a regulation for which EPA will retain primary enforcement authority as per 40 C.F.R. part 141, subpart E.
8. Respondent's public water system is a large system serving more than 10,000 persons and does not purchase its entire water supply from another system.
9. 40 C.F.R. § 141.40(a)(1)(ii) requires a large system serving more than 10,000 persons and not purchasing its entire water supply from another system to monitor for the unregulated contaminants on List 1 of "Table 1-Unregulated Contaminant Monitoring Regulation (1999) List" in 40 C.F.R. § 141.40(a)(3) (hereinafter referred to as the Assessment Monitoring List 1).



10. 40 C.F.R. § 141.40(a)(5)(ii) requires a large water system using surface and/or ground water to sample for the contaminants listed in the Assessment Monitoring List 1 beginning in 2001 and complete the sampling no later than December 31, 2003. Ground water systems must collect two (2) rounds of samples during the time frames specified in 40 C.F.R. § 141.40(a)(5)(ii) (Table 3).
11. 40 C.F.R. §§ 141.35(a), (b) and (e) provide that a water system required to monitor under 40 C.F.R. § 141.40 must report its Assessment Monitoring List 1 monitoring results to EPA with a copy to the State using EPA's electronic reporting system. Under 40 C.F.R. § 141.35(e)(1), the water system is responsible for reviewing and approving its reporting after it has the Assessment Monitoring List 1 monitoring results entered into EPA's electronic reporting system.
12. The State notified Respondent in writing in October of 2000 of the UCMR and its requirements, including the need to monitor for the contaminants listed in the Assessment Monitoring List 1 beginning in 2001 as required by 40 C.F.R. § 141.40(a), and the need to report UCMR monitoring data in the manner required by 40 C.F.R. § 141.35(e).



13. Based on the information available to EPA, the Respondent collected one set of samples on May 21, 2002, but has failed to monitor and report the results of the second set of samples for UCMR List 1 contaminants, as specified in 40 C.F.R. part 141, subpart E, in violation of 40 C.F.R. §§ 141.40(a)(1), § 141.40(a)(5), § 141.35(d) and § 141.35(e).
14. 40 C.F.R. §§ 141.153(d) and 141.207 require Respondent to notify the public of its failure to comply with the UCMR monitoring and reporting requirements. Respondent failed to notify the public of these violations.
15. EPA is issuing this Administrative Order to address the violations enumerated above and to place the Respondent on an enforceable schedule to comply with the UCMR Requirements of the SDWA and 40 C.F.R. part 141, subpart E.

ORDER

Based on the foregoing Findings, and pursuant to section 1414(g) of the Act, IT IS ORDERED:

2. According to the schedule specified in 40 C.F.R. § 141.40(a)(5)(ii)(table 3) and considering the date of Respondent's first sample, Respondent must collect the



second set of samples between October 21, 2004 and October 29, 2004.

3. Respondent shall report, review and approve its second set of UCMR monitoring results in the manner required under 40 C.F.R. § 141.35.
4. Respondent shall conduct all electronic reporting, including the entering, reviewing and approving of UCMR data in EPA's electronic reporting system, as required by 40 C.F.R. §§ 141.40(a) and 141.35, no later than December 31, 2004.
5. Respondent shall comply with the requirements of 40 C.F.R. § 141.201 and § 141.153(f) to notify the public of the violations enumerated above. Respondent must report this violation to the public no later than October 31, 2004.
6. Respondent shall comply with the requirement of 40 C.F.R. § 141.207 to notify the persons served by the system of the availability of the results of the UCMR monitoring. In addition, Respondent must report these results in its Consumer Confidence Report, as required by 40 C.F.R. § 141.153(d).
7. Reporting requirements specified in this Order shall be provided by certified mail to:

Jackson Naftel
U. S. EPA Region 8 (8ENF-W)



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999 18th Street, Suite 300
Denver, Colorado 80202-2466

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order may subject Respondent to an administrative civil penalty of up to \$27,500 under section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), or a civil penalty of not more than \$32,500 per day of violation, assessed by a U.S. District Court, under section 1414(g)(3)(C) of the Act, 42 U.S.C. § 300g-3(g)(3)(C).
3. Violation of any requirement of the SDWA or its implementing regulations may subject Respondent to a civil penalty of not more than \$32,500 per day of violation, assessed by an appropriate U.S. District



Court, under section 1414(b) of the Act, 42 U.S.C.

§ 300g-3(b).

4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 27TH day of July, 2004.

David J. Janik

Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

SIGNED

Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON
JULY 27, 2004.**



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